

4-1



**San Luis Obispo County**  
**Department of Planning and Building**  
**Memorandum**

**TO: PLANNING COMMISSION**

**FROM: MATT JANSSEN, SUPERVISING PLANNER**

**DATE: JUNE 9, 2005**

**SUBJECT: STUDY SESSION ON SUBSTANTIAL CONFORMITY**

The issue of Substantial Conformity has come up several times in the last year during the Public Comment portion of Planning Commission hearings. Specifically, members of the public have questioned whether it is appropriate for staff to make a determination using our adopted Substantial Conformity Policy & Procedure on all projects (controversial or not) without triggering a new public hearing on the proposed changes.

The purposes of this study session are to:

1. Report on the existing Substantial Conformity Land Use Ordinance Sections and adopted Policy & Procedure and the procedure used by staff (see attachment),
2. Report on the three common categories of project changes that are reviewed by staff, and
3. Discuss options for changes to the existing process.

**DISCUSSION**

**Existing Substantial Conformity Ordinance Sections and Policy & Procedure**

The existing Substantial Conformity Policy & Procedure was officially adopted by the Department of Planning & Building on September 10, 2002. However, Sections 22.64.050 and 23.03.038 of the Inland and Coastal Land Use Ordinances have been part of the County Code since their adoption in the 1980's (1980-Inland and 1988-Coastal) and the practice of making conformity determinations has been in place for 25 years. In addition, Subdivision Map Act Section 66474.1 - Final or parcel map must be approved if in substantial compliance with approved tentative map; has been used by staff in making substantial determination calls for the last 25 years (see attachment).

4-2

Planning Commission Study Session on Substantial Conformity  
June 9, 2005

#### Land Use Permits

Coastal Zone Land Use Ordinance Section 23.02.038 (*Changes to approved project*) states:

*An approved land use shall be developed or established only as shown on the project plans approved as part of the permit application, except where otherwise provided by this section. Deviation of project design or construction from the approved plans, and changes to the project after completion of construction may occur only as follows:*

*(1) Except as provided by subsection (2) of this section, a feature of the use or project subject to the standards of Chapters 23.04, 23.05, 23.07 or 23.08, may be modified provided that the change requested is in conformity with the standards of this title. Such change is to be requested in writing with appropriate supporting materials and explanation of the reasons for the request. The planning director may approve a requested change upon verification of its conformity with this title; provided that, such approval shall not modify the effective date of the land use permit.*

*(2) Where the environmental coordinator determines that the change results in an increased impact to an aspect of the project that was specifically addressed in a negative declaration or environmental impact report of the project, or the change relates to a project feature that was specifically addressed in conditions of approval of a minor use permit or development plan, or that was a specific consideration by the review authority in the approval of a minor use permit or development plan, a new minor use permit or development plan approval shall be obtained.*

Note: Section 22.64.050 of the Inland Land Use Ordinance (Title 22) includes very similar (and sometimes identical) language to that in Section 23.02.038 of the Coastal Zone Land Use Ordinance - (see attachment).

#### Subdivisions

Section 66474.1 of the Subdivision Map Act states:

*A legislative body shall not deny approval of a final or parcel map if it has previously approved a tentative map for the proposed subdivision and if it finds that the final or parcel map is in substantial compliance with the previously approved tentative map.*

#### **Procedure used by staff**

The existing Substantial Conformity Policy and Procedure (No. 7.55.03) establishes guidelines for staff to make determinations on whether proposed changes to land use permits or final maps are consistent with the project that was approved (see attachment).

4-3

Planning Commission Study Session on Substantial Conformity  
June 9, 2005

Staff follows the following procedure each time the applicant proposes a change to the original project:

1. A fee for *Revised Plans* is charged to the applicant, (\$181 for FY '04-05),
2. The proposed change is reviewed for consistency using the Land Use Ordinance and the Substantial Conformity Policy & Procedure, and
3. The applicant is informed of our determination (by telephone, e-mail, or in writing). The applicant then has 14 days to appeal that determination to the Planning Commission if they disagree with our determination. However, appeals are rare because most applicants have contractors ready-to-go and cannot afford to lose two or three months getting to a Planning Commission appeal hearing at this point in the process. They also do not want to appear in front of the Planning Commission arguing against staff and would rather negotiate with staff towards a revised project that could be found consistent with the original project.

Substantial Conformity determinations are made on proposed development and on approved tentative maps. Proposed changes include, but are not limited to: reductions to the floor area, reductions to the number of units, minor increases in the height, project design changes to protect native trees and/or habitat, changes to building materials and colors, minor re-alignment of roads, reductions in the number of lots, minor lot configuration changes, and interior alterations that do not change the footprint of the approved project. These types of changes are typically found consistent (absent other issues) with the original project. Substantial Conformity requests for major changes such as moving a building site, increases to square footage, or increases in the approved height cannot be approved without a new application and a new hearing.

The majority of proposed changes are found to be minor in nature and consistent with the originally approved project because they are consistent with the intent, mass, scale, and environmental impacts of the originally approved project. A common example of this is a project approved with a specific architectural design under one landowner (Owner A), and the next landowner (Owner B; who purchased the property with "permits issued") prefers a different type of architecture. As long as the structure proposed by owner B is consistent in location, mass, footprint, height, and equal to or less than the original environmental impacts, it should be found consistent with the original approval.

However, in some cases a reconsideration or new application is appropriate. For example, if the previously approved project has a mitigation measure and condition of approval that specifically required the project to avoid a known archaeological site and the change proposes to move the same structure on or near the known archaeological site, a new land use permit would be necessary.

If the proposed change is associated with a land use permit for a use (with or without a structure), then staff reviews the proposed new use for consistency with parking

4-4

Planning Commission Study Session on Substantial Conformity  
June 9, 2005

requirements, intensity of water use, environmental impacts, and other factors. For example, if a use was approved in an existing commercial building (e.g. a bank) and the name of the business changed but the type of business remained the same, staff would likely find the proposed new bank consistent with the previously approved bank. However, if the proposed new use was a restaurant instead of another bank, then water use would likely increase and parking requirements may change. This proposed change would likely require a new land use permit, new referrals, and a new hearing.

**Three common categories of proposed project changes**

There are three main categories of proposed changes to projects reviewed by staff in the Substantial Conformity process. They are Major, Minor, and Additional Information Needed. The following is a brief description of each category and examples of each:

Minor

The majority of changes proposed after land use permit or land division approval are minor in nature and are typically approved using the Substantial Conformity Policy & Procedure. These projects usually involve a very minor change to the footprint or design of the structure. For example, if an applicant proposes to project into a side setback with a fireplace that was not approved originally, and the new fireplace projection was consistent with the all applicable regulations (including no impacts under CEQA), then staff would be inclined to find the proposed change in Substantial Conformance with the original approval because the proposed change is consistent with our code and did not result in any significant change to the proposed development.

Major

Few proposed changes fall within this category. However, when they are submitted, it is fairly obvious they trigger a new land use permit. For example, if an applicant is proposing to enlarge a previously approved land use permit for a one-story, 1200 square foot residence and the proposed change is for a two-story, 2400 square foot residence, a new land use permit will be required. This type of proposed change typically comes from a new landowner. The new owner does not have the same square footage requirements or desires as the previous owner. If the opposite was proposed (where the original approval was for a two-story, 2400 square foot residence and the proposed change was for a one-story, 1200 square foot residence) staff would typically find the proposed change consistent with the original approval because the new residence would be "less than or equal to" the size and mass of the original approval. Of course, this assumes that no other issues are triggered with the new proposal (e.g. archaeology). Another obvious example of a major proposed change would be a request for an additional parcel or the movement of a recorded building site. Recorded building sites are typically associated with extensive CEQA review on the map and intended to mitigate potentially significant environmental impacts (e.g. archaeological, visual, biological, etc.).

Additional Information Needed

If a proposed project change is not obviously Minor or Major, it falls in this category. For example, a new landowner wants to change the roof pitch on an approved single family

4-5

Planning Commission Study Session on Substantial Conformity  
June 9, 2005

residence that would result in a ridgeline that is two feet higher than the approved project. Even though the proposed change would result in a higher roof ridgeline, the proposed new roof pitch may provide for a better view of the ocean from a public view (e.g. Highway 1). On the surface, it would appear that a taller structure will only result in more impacts. However, it's not always that straightforward.

For projects that fall into this class, staff often needs additional information to make a determination. For the example listed above, a visual simulation from Highway 1 may suffice. If, after review of the visual simulation, staff determines that the new design is consistent (or better) with the impacts of the original design, then the project change will be found to be in substantial conformance with the original approval. If, however, staff determines that the change is not consistent with the impacts of the original design, staff will notify the applicant that a new application and hearing are necessary.

**Potential Changes to the Substantial Conformity Process**

Staff believes the Substantial Conformity process has worked remarkably well for 25 years. When you compare the number of Substantial Conformity determinations made on an annual basis (approximately 100) with the number of determinations that create significant public controversy or are found to be in error, it appears that the vast majority of these determinations are being made correctly and consistent with our adopted Policy and Procedure. However, if your Commission wants to consider changes to the existing system, staff offers the following discussion and alternative:

If changes to the process are necessary, staff recommends the Commission focus on what, if anything, is wrong with the existing process. For example, if post-approval changes are proposed for projects that were appealed, it may be appropriate to require a new hearing on those projects (as long as the proposed change is related to one of the issues of appeal). In other words, if a project was appealed because it may have resulted in potentially significant impacts to a public view corridor (e.g. Highway 1), then a proposed change regarding parking should not trigger a new hearing (this assumes parking did not impact the view corridor and staff found the proposed parking change minor in nature and consistent with the original approval). However, if the applicant was proposing a post-approval change that affected the visual impacts of the structure (e.g. the color of stucco), or proposed to change to a condition of approval specifically added to lessen the visual impacts of the project, a new hearing should be required. This change to the process would also allow for the maximum public input on controversial projects (that were previously appealed).

With this in mind, staff offers the following for consideration:

Your Commission could direct staff to change the adopted Policy and Procedure to require proposed changes to projects that were appealed be sent back to the final decision-making body for a reconsideration and new hearing (as long as the proposed change is related to the issues of appeal or conditions of approval addressing issues of appeal).

4-6

Planning Commission Study Session on Substantial Conformity  
June 9, 2005

## CONCLUSION

The Substantial Conformity process allows staff to review and approve changes to projects after approval. The vast majority of these proposed changes are minor in nature and do not involve significant issues. Processing these minor changes in a timely fashion results in good customer service and allows staff to focus on more complicated projects. Proposed changes that are not clearly either minor or major, typically require more information. Sometimes evaluation of that additional information results in a determination of consistency, and sometimes it results in a determination that a new application and hearing are necessary. When major changes are proposed that deserve a new hearing, it is important that staff identify these and inform the applicant as soon as possible because the review of these types of changes may result in an additionally lengthy processing time.

Planning Commission Study Session on Substantial Conformity  
June 9, 2005

**Inland Land Use Ordinance § 22.64.050 - Changes to an Approved Project**

An approved land use shall be developed or established only as shown on the project plans approved as part of the permit application, except where otherwise provided by this Section. Deviation of project design or construction from the approved plans, and changes to the project after completion of construction may occur only as follows.

- A. Except as provided by following Subsection B., a feature of the use or project subject to the standards of Articles 3, 4, and 5 may be modified, provided that the change requested is in with standards of this Title. The change shall be requested in writing with appropriate supporting materials and explanation of the reasons for the request. The Director may approve a requested change upon verification of its conformity with this Title, provided that the approval shall not modify the effective date of the land use permit.
- B. Where the Director determines that the change results in an increased impact to an aspect of the project, that was specifically addressed in a Negative Declaration or Environmental Impact Report for the project, or the change relates to a project feature that was specifically addressed in conditions of approval of a Minor Use Permit or Conditional Use Permit, or that was a specific consideration by the Review Authority in the approval of a Minor Use Permit or Conditional Use Permit, a new Minor Use Permit or Conditional Use Permit approval shall be obtained.

**Coastal Zone Land Use Ordinance § 23.02.038 - Changes to Approved Project**

An approved land use shall be developed or established only as shown on the project plans approved as part of the permit application, except where otherwise provided by this section. Deviation of project design or construction from the approved plans, and changes to the project after completion of construction may occur only as follows:

- a. Except as provided by subsection b. of this section, a feature of the use or project subject to the standards of Chapter 23.04, 23.05, 23.07 or 23.08, may be modified provided that the change requested is in conformity with the standards of this title. Such change is to be requested in writing with appropriate supporting materials and explanation of the reasons for the request. The Planning Director may approve a requested change upon verification of its conformity with this title, provided that such approval shall not modify the effective date of the land use permit.
- b. Where the Environmental Coordinator determines that the change results in an increased impact to an aspect of the project that was specifically addressed in a negative declaration or environmental impact report of the project, or the change relates to a project feature that was specifically addressed in conditions of approval of a Minor Use Permit or Development Plan, or that was a specific consideration by the Review Authority in the approval of a Minor Use Permit or Development Plan, a new Minor Use Permit or Development Plan approval shall be obtained.

**State Subdivision Map Act**

**66474.1.** A legislative body shall not deny approval of a final or parcel map if it has previously approved a tentative map for the proposed subdivision and if it finds that the final or parcel map is in substantial compliance with the previously approved tentative map.



# Policies and Procedures

No. 7.55.03

SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING

County Government Center ■ San Luis Obispo, California 93408 ■ Telephone (805) 781-5600

## SUBJECT

**SUBSTANTIAL CONFORMITY**  
(Tentative Maps / Land Use Permits)

4-8

Effective Date 9/10/02

Updated

9-10-02

Approved

Date

### A. PURPOSE

To establish guidelines for making a determination on whether a final map is in substantial conformance with a tentative map or whether a change to an approved project is allowed for a land use permit consistent with Section 22/23.02.038.

### B. APPLICABLE TO

All Planning Department staff and Public Works Development Services Division and County Surveyor.

### C. POLICY

It is the policy of this department: (1) to sufficiently demonstrate that changes made to a final map are in substantial conformance with what was reviewed and approved by the Review Authority consistent with the approved environmental determination; and (2) to only allow deviation of project design or construction from the approved land use permit when the change is in conformity with ordinance and general plan provisions and will not adversely effect the environment.

### D. PROCEDURES

1. A final map or feature of the use or project may be modified provided that the change requested is in conformity with the general plan, all standards of any applicable ordinances, and the project's environmental determination and consistent with the adopted findings of the Review Authority.
2. Such change is to be requested in writing with appropriate supporting materials and explanation of the reasons for the request. The request shall be made to the Department of Planning and Building and shall include the required fee pursuant to the fee schedule.
3. All requests for change to final maps shall be routed to the Public Works Department (Development Services Division) for their input.
4. The attached form shall be completed and a copies placed in the Planning and Building Department file, the Public Works file and the original shall be sent to the applicant.

### E. REFERENCES

Subdivision Map Act Sections 66474.1 - Final or parcel map must be approved if in substantial compliance with approved tentative map; 66442 - Certificate by County Surveyor and 66442.5 - Engineers/Surveyors Statement.

RECEIVED

APR 19 2004

Planning & Bldg



# SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP  
DIRECTOR

4-9

SUBJECT: Substantial Conformity for \_\_\_\_\_

- ☐ We have reviewed the tentative map / land use permit and the environmental determination approved for the above-referenced project and have determined that the proposed changes are in substantial conformity:

- |   |  |
|---|--|
| <input type="checkbox"/> Lot layout             | <input type="checkbox"/> Satisfies all condition of approval     |
| <input type="checkbox"/> Circulation system     | <input type="checkbox"/> Conforms to environmental determination |
| <input type="checkbox"/> Provision of utilities | <input type="checkbox"/> Other                                   |

---

---

---

- ☐ We have reviewed the tentative map / land use permit and the environmental determination approved for the above-referenced project and have determined that the proposed changes are not in substantial conformity and a new approval is necessary because:

- |   |  |
|---|--|
| <input type="checkbox"/> Lot layout             | <input type="checkbox"/> Does not satisfy all condition of approval      |
| <input type="checkbox"/> Circulation system     | <input type="checkbox"/> Does not conform to environmental determination |
| <input type="checkbox"/> Provision of utilities | <input type="checkbox"/> Other   |

---

---

---

Concurrence:

Glen Priddy  
County Surveyor

Richard Marshall  
Public Works

Supervising / Principal Planner  
Department of Planning & Building



# GUIDE TO SUBSTANTIAL CONFORMITY

San Luis Obispo County Department of Planning and Building

## INTRODUCTION

If you have an approved project or tentative map and wish to make modifications to that approval that are not substantial enough to warrant a new public hearing, you can request that staff complete a Substantial Conformity determination. This is a determination made by the Department staff on whether a final map is in substantial conformance with a tentative map or whether a change to an approved project is allowed for a land use permit consistent with Sections 22.64.050 of the Land Use Ordinance and 23.02.038 of the Coastal Zone Land Use Ordinance.

## HOW IS THE DETERMINATION MADE?

Department staff will review your request to see if it sufficiently demonstrates that changes made to your final map are in substantial conformance with what was reviewed and approved by the Review Authority consistent with the approved environmental determination in the case of a land division application. For land use permits, deviation of project design or construction from the approved land use permit is only allowed when the change is in conformity with ordinance and general plan provisions and will not adversely effect the environment.

## HOW DO I MAKE THE REQUEST?

A request for a Substantial Conformance determination is to be requested in writing with appropriate supporting materials and explanation of the reasons for the request. The request shall be made to the Department of Planning and Building and shall include the required fee pursuant to the fee schedule.

The supporting materials must include information about how you think the map or project is in substantial compliance with the original approval, and how the final map or feature of the use or project that you are requested be modified is in conformity with the general plan, all standards of any applicable ordinances, and the project's environmental determination. In addition, supporting material needs to be submitted to show how the proposed modification is consistent with the adopted findings of the Review Authority.

## HOW IS THE REQUEST EVALUATED?

All requests for change to final maps will be routed to the Public Works Department (Development Services Division) for their input. A determination on Substantial Compliance on a map will be made by both Public Works and Planning. If one or the other department determines the request is NOT in substantial compliance, the change will not be approved.

Requests for change to land use permits are completed by the Planning Department, except in instances where conditions that were recommended by other county, state or federal agencies are being requested for change. In those cases, the Planning Department will work in conjunction with the appropriate agency in making the determination.

## HOW WILL I KNOW IF MY CHANGE IS APPROVED?

A letter will be sent to you notifying you of the decision to find the change in Substantial Conformance or notifying you that a new public hearing is necessary to approved the proposed modification.

## MORE INFORMATION

If you are considering changes to your project or tentative map, you may want to contact your project manager to discuss the changes before making the formal Substantial Conformity request. At this meeting, you and the project manager can go over the conditions of approval, the findings, the environmental determination and the county's ordinances and general plan. This meeting should give you a good idea of whether your request could be supported.

If you want more information about the laws that provide the authority to make these changes, you can review Subdivision Map Act Sections 66474.1 - Final or parcel map must be approved if in substantial compliance with approved tentative map; 66442 - Certificate by County Surveyor and 66442.5 - Engineers/Surveyors Statement and Sections 22.64.050 and 23.02.038 - Changes to Approved Project of the County's Land Use Ordinance and Coastal Zone Land Use Ordinance.